

State of Alaska Regulations 39.128

5 AAC 39.198. FOREIGN FISH PROCESSING PERMITS. (a) Except as provided in this chapter, a foreign fishing vessel is prohibited from engaging in fish processing in the internal waters of Alaska.

(b) A foreign fishing vessel may engage in fish processing in the internal waters of Alaska if

(1) the foreign nation under which it is flagged will be a party to an agreement or a treaty, as required by 16 U.S.C. § 1856(c), and during the time the vessel will engage in the fish processing;

(2) the owner or operator of the foreign fishing vessel, or a person representing the owner or operator, applies to the governor for, and is granted, a foreign processing permit for the vessel to engage in fish processing in the internal waters of Alaska.

(c) The governor will not grant a permit under (b)(2) of this section if he determines that fish processors in Alaska have adequate capacity, and will use that capacity, to process all of the United States harvested fish from the fishery concerned that are landed in Alaska.

(d) In determining whether or not fish processors in Alaska have adequate capacity, and will use that capacity, to process all of the United States harvested fish from the fishery, the governor will, in his discretion, consider the following factors:

(1) the total allowable catch expected in the fishery;

(2) availability and capability of harvesting vessels in Alaska, seasonal fishing and processing schedules, and marketing and other similar conditions in the fishery concerned and in alternative fisheries;

(3) availability of labor, adequacy and condition of processing machinery, freezers, and cold storage facilities of fish processors in Alaska. and the ability, intent and plans of those processors to process particular species;

(4) economic considerations, including contracts, agreements, and negotiations for the purchase of United States harvested fish by processors in Alaska;

(5) geographical considerations including proximity of harvest areas to the facilities of fish processors in Alaska; and

(6) the extent to which fish processors in Alaska have processed particular species.

(e) An owner or operator of a foreign fishing vessel who submits an application for a permit to engage in fish processing in the internal waters of Alaska must

(1) state the reasons why fish processors in Alaska do not have adequate capacity, or will not use their capacity, to process all of the United States harvested fish from the fishery concerned that are landed;

(2) provide the following information

(A) vessel description and identification;

(B) names and descriptions of the vessels, if known, from which the applicant will purchase fish;

(C) the species and quantity proposed to be processed and processing methods to be used;

(D) a description of the fishery from which the species will be harvested;

(E) the stage of development of the fishery as established, developing or undeveloped, and a statement of how the proposed operation in the fishery will help to achieve the full potential of the resources and provide benefits including employment, food supply, and revenue;

(F) the dates for which permission is sought;

(G) the specific locations in internal waters proposed for foreign processing;

(H) the qualifying governing international fisheries agreement or treaty, as required by 16 U.S.C. § 1856(c);

(I) evidence of compliance with applicable federal and state regulations including state

laws and regulations that apply to processing vessels;

(J) proof of financial ability to purchase the expected quantity of fish to be processed, at reasonable market conditions;

(K) the ultimate sales market for the product, and marketing information showing how the operation will benefit development of the United States fishing industry;

(L) other information on the applicant's vessels, equipment, operations, and experience, reliance on local fishing vessel operations, and ability to benefit the United States fishing industry and residents of Alaska.

(f) In evaluating an application for a foreign processing permit, the governor will consider whether and to what extent the applicant and the applicant's nation have been, are, or will be contributing to the conservation, use, management, development, and enforcement of domestic fisheries programs.

(g) If a permit is granted, the governor will, in his discretion, designate times and areas of operations, species and quantities to be processed and other conditions of operation in order to attain desired benefits to the United States fishing industry.

(h) The governor will, in his discretion, suspend or terminate a permit granted under this section when he determines that processors in Alaska have adequate capacity, and will use that capacity, to process all United States harvested fish from the fishery and that the suspension or termination is necessary to achieve desired benefits to the United States fishing industry.

(i) The governor will, in his discretion, appoint a foreign processing advisory committee to obtain and review information regarding fish processing operations, including capacity determinations, in Alaska.

(j) In this section

(1) "developed fishery" means a fishery in which United States processing capacity is available and has been used by United States fishermen and processors but not to the full extent of the total allowable catch in the fishery;

(2) "established fishery" means a fishery in which United States processing capacity has been available and has been used by United States fishermen and processors to the full extent of the total allowable catch in the fishery and in which full utilization by United States fishermen and processors is likely to continue;

(3) "fishery" means

(A) a stock or stocks of fish which may be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; or

(B) the commercial taking of these stocks;

(4) "foreign fishing vessel" means a vessel that is documented under the flag of a foreign nation and engages in fish processing;

(5) "internal waters of Alaska" means all waters within the boundaries of the state except those seaward of the baseline from which the territorial sea is measured:

(6) "processing" means the application of preservative methods to the flesh of fish to maintain quality and prevent deterioration, including

(A) storage and transportation of unprocessed fish:

(B) preparation for preservation;

(C) cooking, canning, smoking, salting, drying, freezing, icing, refrigeration, vacuum packing, gas, microwave preservation, and other preservation means;

(7) "total allowable catch" means the quantity of fish in a fishery that may be harvested without detriment to sustained yield;

(8) "undeveloped fishery" means a fishery in which there has been no United States commercial fishing nor processing of the total allowable catch in the fishery. (In effect before 1982; am 6/16/82. Reg. 83; am 9/30/84, Reg. 91)

Authority: Art. III, Alaska Const.

16 U.S.C. §1801 et seq.

Editor's Note: Although 5 AAC 39.198 appears in Title 5 of the Alaska Administrative Code,

it was amended effective 6/16/82, Register 83, by the governor under the Magnuson Fishery Management and Conservation Act, 16 U.S.C. §1801, et seq., and Art. III of the Alaska Constitution. It was amended

effective 9/30/84, Register 91. by the commissioner of Commerce and Economic Development under an October 31, 1983 delegation of authority from the governor.